

FISCAL NOTE

HB 1975 - SB 2034

April 4, 2007

SUMMARY OF BILL: Requires any defense attorney representing a defendant in a capital case to be disqualified from current representation or barred from future representation in capital cases if any court rules such attorney provided ineffective legal assistance or if such attorney admits to providing ineffective legal assistance.

ESTIMATED FISCAL IMPACT:

**Increase State Expenditures - \$10,700,300 / Indigent Criminal
Defense Fund**

Assumptions:

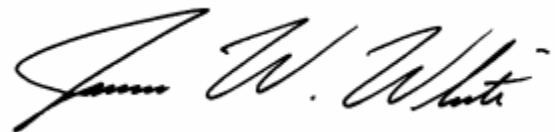
- With limited exceptions, Tennessee Supreme Court Rule 13 requires public defenders to serve as lead counsel for indigent defendants in capital trials and appeals. Tenn. Code Ann. § 40-30-206 requires the Office of the Post-Conviction Defender to represent indigent defendants in capital post-conviction hearings and appeals. If these attorneys are disqualified pursuant to this legislation, the Administrative Office of the Courts (AOC) would be required to pay a private attorney to represent each defendant at trial, on direct appeal, during post-conviction proceedings and appeal, and during proceedings immediately prior to a scheduled execution. AOC would be required to compensate an investigator in each case. Currently, the AOC compensates expert witnesses and mitigation specialists but not investigators when these offices represent capital defendants.
- Currently, approximately 100 capital cases are pending in the state trial and appellate courts, and there are 102 inmates on death row. It is difficult to predict how many cases this bill could affect. It is not uncommon for a court to rule that an attorney made an error and deny relief on the basis that the defendant was not prejudiced by the error. It is not uncommon for an attorney to testify during a post-conviction proceeding regarding errors made while representing a capital defendant. It is conservatively assumed that 20 percent of capital cases will have either a judicial determination of ineffective assistance or an admission by counsel that he/she provided ineffective assistance.

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- AOC estimates that an attorney could bill 1,500 hours during the pre-trial, trial, and direct appeal phases of a capital murder case. Lead counsel would be compensated at a rate of \$100 per hour for in-court time and \$75 per hour for out-of-court time. Counsel would also be compensated for expenses pursuant to Section 4 of Tennessee Supreme Court Rule 13. Post-conviction counsel could exceed 1,500 hours. Post-conviction counsel would be compensated at a rate of \$80 for in-court time and \$60 per hour for out-of-court time. As with trial counsel, post-conviction counsel would also be compensated for expenses. The investigators would be compensated at a rate of \$60 per hour plus expenses. Each investigator's fee likely will exceed \$45,000.
- The cost of providing private counsel would be \$15,000 per case for in-court time (150 hours x \$100/hr.) and \$101,250 for out-of-court time (1,350 x \$80/hr.), plus attorney expenses of \$40,000, for a total of \$156,250 through direct appeal, plus \$12,000 per case for in-court time (150 hours x \$80/hr.) and \$81,000 for out-of-court time (1,350 x \$60/hr.), plus attorney expenses of \$30,000, for a total of \$123,000 through post-conviction appeal. Investigator costs will be an additional \$45,000 per case. The total cost per case through post-conviction appeal will be \$324,250. The cost for all capital cases in which private counsel would be required would be \$10,700,250 (\$324,250 x 33 cases) and would be paid for out of the Indigent Criminal Defense Fund.

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "James W. White". The signature is fluid and cursive, with a large initial "J" and "W".

James W. White, Executive Director